ATLANTIS PRESS

Advances in Economics, Business and Management Research, volume 105

1st International Scientific and Practical Conference on Digital Economy (ISCDE 2019)

"The right to disconnect" in digital economics

Chudnovskikh M.V.
Ural State University of Economics
Yekaterinburg, Russia
chud-marina@mail.ru

***Abstract* — Development of digital technologies leads to the fact that employees take care of constant communication resulting in accumulated fatigue, efficiency loss. Digitalization requires updating the current rules regulating the working time and the right to rest. The paper gives the content analysis of "the right to disconnect" of an employee who uses Internet and other communications means. "The right to disconnect" was captured in legislation of France, Italy and a number of other countries. This right is necessary for maintaining balance between work and personal life. "The right to disconnect" has particular significance for women who combine their work commitments and childrearing. Based on statistical and research data on special aspects of the time use of remote employees, the author draws conclusion of the necessity of capturing "the right to disconnect" in Russian labor legislation.**

Keywords — the law, the right to disconnect, remote employment, balance between work and personal life, digital economics.

I. INTRODUCTION

"The right to disconnect" conception has been actively developed over the last ten years with advances in information and communication technologies and their implementation to the management sphere. Digital technologies give rise to many possibilities and advantages but simultaneously accept risks negatively affecting the employees. Remote work is not just linked to a single physical position during the working time. Digital technologies are used for establishing flexible working schedules. Remote employees can work world-wide in different time zones. Some technological services (ticketing, call centers, taxi) rely on the principle that employees are constantly accessible and on-line at their workplaces. The possibility to stay connected and to be accessible is the key feature of the remote employee. However such accessibility and involvement adversely affect personal life, health and labor efficiency. "The right to disconnect" has particular significance for arrangement of remote employment for women who combine remote work and child and aged people care.

II. RESEARCH METHODOLOGY

In legal terms, "the right to disconnect" may be regarded as implementation of cl. 24 of "The Universal Declaration of Human Rights" which states: "Everyone has the right to rest and leisure including the right for rational limitation of working day and periodic holidays with pay". Implementation of this right in digital economics conditions requires additional analysis.

The goal of research consists in assessment of the possibility of "the right to disconnect" introduction to the Russian legislation for enhancing legal guarantees of employees using digital technologies and communications means in their work.

Research tasks are:

- carry out the comparative study of scholarly views on issues relating to "the right to disconnect";
- give an estimate to available experience of the legal regulation in legislations of different countries and define position of the Russian legislation.

The research included two main stages. Systematization of scholarly views on issues relating to "the right to disconnect" was carried out at the first stage. At the second stage, based on the comparative and legal method, normative acts of foreign countries that constitute the necessary field for implementation of "the right to disconnect" into management practices have been studied. Based on the carried out comparative research, recommendations on improvement of the Russian labor legislation have been presented.

III. RESULTS OF THE RESEARCH

Scholars abroad debate "the right to disconnect" for nigh on several years both with regard to human resource management [1, 2] and in legal context [3, 4]. The necessity of limitation of working time is the especially critical problem for Japan and China [5]. Distinctions of ethnic character of residents of Southeast Asian nations, their diligence, dedication have resulted in generation of "Karoshi" (death by overwork) phenomenon. The first case of death at work was recorded as far back as 1969. Since 1987 the Ministry of Labor of Japan reports statistics in regards to death at workplace due to over-fatigue. It should be highlighted that statistics of "Karoshi" does not include hazard death or death from injury at work. As usual, the cause of employee`s death is coronary thrombosis or cerebral thrombosis. "Karoshi" caused death of the Prime Minister of Japan Keydzo Obuti in 2000 who had only three days off for 20 months of period spent on sentry and worked no less than 12 hours per day.

With the development of remote technologies, the reprocessing problem became even more critical for Japan and China. So, for example, there is the working time system "996" in China [5]. It means that employees work from 9 AM to 9 PM 6 days per week. In this case the actual duration of working week is 72 hours. And as usual the employee`s overwork is not paid. The Chinese Company WeChat not only

validates the work schedule "996". As its head says "when looking back on our hard work in a few years' time, we will find it worthwhile" [5]. At the present time, 996.icu site gives the list of more than 100 Chinese companies that use such work schedule. In mainly includes companies of IT-sector. The site slogan is "Developers` life is important". In site creators` opinion, the mere spread of the list of employers who force on employees to work after working hours can facilitate knowing the problem. The reasons of this phenomenon are different – motivation to earn more, lag time, need to maintain uninterrupted functioning of on-line services. Whatever the reason, the fact remains – distinctions between working time and rest time disappear in digital economics. Constant "mainstreaming" into the working process due to the use of social networks, WhatsApp, Viber, e-mail increases over-strain, adversely affects the state of health and labor productivity.

The need in "the right to disconnect" is very important for persons who begin to conduct their activities by means of mobile platforms and web scraping tools. Example can be presented by Uber and Yandex.Taxi services. Web scraping tools give the possibility to drivers to earn by means of constant order placement. However, promotion of competition has resulted in significant reduction of transport rates. As a result, many drivers instead of normal 8-hour working day have to work more to keep their previous earnings. The issue of monitoring the work time duration of persons who carry out their professional activities through frameworks is a topical one. The excess of transport-related uptime constitutes a threat aside from employees` health, but also for the safety of road users, passengers.

Decision Appeal No. UKEAT/0056/17/DA which handed out the appeal claim of the British tribunal on labor disputes can change approach to business not only Uber, but also other services aggregating announcements of individuals on providing services. Uber drivers of London were claimers who together with others have laid actions on issues relating to amount of employment. They demanded that they were recognized as employees with extension to them the Employment Rights Act, 1996, Working Time Regulations, 1998 and National Minimum Wage Act. The court found that any driver who had involved Uber software application was within the territory where it is allowed to work and was able and ready to accept tasks, worked at Uber London Ltd within the framework of labor contract. Uber Company plans on appealing this decision so the issue is not yet solved. Nevertheless, this example suggests that in digital economics conditions labor law relations are subjected to essential modifications. These modifications shall be also recognized in legislative sphere.

Now, "the right to disconnect" is relatively new phenomenon for Russian science. Comparatively inconsiderable number of publications is dedicated to this problem. Kh.I. Song and Zh. V. Chernova study the experience of a number of foreign countries including France, Germany and South Korea on capturing "the right to disconnect" in legislation [7]. The paper of T. M. Khusyainov gives analysis of USA and Germany experience [8]. E. A. Gremilova considers "the right to disconnect" as the necessary mean against hyper-exploitation in education sector [9]. A. S. Timoshchuk considers "the right to disconnect" in media-competency contexts [10]. Thus, Russian science is only on the threshold of "the right to disconnect" research. In these conditions, it is very important to study the first experience of legislative capturing "the right to disconnect".

Since 2017 "The right to disconnect" is captured in labor legislation of France influenced by studies on the influence of digital technologies on work. "The right to disconnect" is necessary for keeping balance between work and personal life (work and life balance conception). Enactment of such a law is driven by the need of adaptation of labor legislation to digital economics. Without "the right to disconnect", risk of emotional and psychological over-strain increases, the sense of constant fatigue, stress expands. New law of France, aimed to prevent the professional burnout and keeping family relationship, obliges the companies, where more than 50 persons work, together with their employees to include the issue on "the right to disconnect" into collective bargaining, determine and capture in the local act in what hours employees are excused from reply to business letters to avoid intervention to their private life. It is also necessary that employers learn managers regarding the smart use of digital communications with employees. Companies, where less than 50 employees work, must inform employees on rules of using digital communications outside of working hours. If an employer omits "the right to disconnect" to Mandatory Annual Negotiation (MAN), it is liable to a fine of around 4000 euro.

"The right to disconnect" was also captured in legislation of Italy. Senate Law No. 2233-B "Measures to safeguard non-entrepreneurial self-employment and measures to facilitate flexible articulation in times and places of subordinate employment" states that the labor contract shall capture in written the employee`s rest time and describe technical and organizational measures necessary for disconnection of employee from process equipment.

In Germany "the right to disconnect" is not codified by law as yet, however, as a matter of fact, it is authorized by leading concerns. The German model can be named as the model of "corporative self-regulation". In is based on the social partnership principles. Despite the absence of the uniform act, many large German employers attach "the right to disconnect" at the enterprise level. As far back as 2013, the Labor Ministry of Germany accepted strategy according to which bans are instituted for:

- communications with employees after business hours (excluding acute situations);
- disciplinary action against employees when they do not answer e-mail messages or turn off their mobile telephones after business hours.

"Volkswagen" backed out of sending out of corporate mail to employees after business hours. Another technology solution allows to wait with collection of letters by the employee prior to the next working day. A number of German enterprises locks up sending out of e-mail messages to employees being on holiday or on sick leave [6]. In researchers` opinion, the German model of "the right to disconnect" regulation corresponds to features of corporate culture. It is not important for German enterprises how many hours the employee works, but it is important how effectively it works during business hours.

Implementation of "the right to disconnect" gestates in legislation practice as well. Industrial dispute tribunal in

Ireland adjudges 7500 euro to the employee who was due to reply work-related letters after business hours. The court held that while sending out and receiving letters, there was exceeding of the working time duration established by law.

For USA and Canada, the matter of the necessity of "the right to disconnect" introduction remains the matter of violent dispute yet. In 2018, in New York City, there was made a draft bill on amendments being made to the New York City charter and the New York City administrative code in relation to particular employees who are turned off from e-mail messages after business hours. The draft bill is focused on companies with a number of employees more than 10 persons. The draft bill provides a ban to require of employees answering to e-mail letters and text messages beyond the normal working day. At American legislators` suggestion, the companies that violated these restrictions are subjected to a fine in the amount from 250 dollars per each case, as suggested. However, this draft bill is not accepted until now. Furthermore, many American business people and experts on political questions consider that introduction of such bill is not required.

Attempts of "the right to disconnect" legislative recognition took place in Canada as well. In 2018, March 22, 2018 Gabriel Nadeau-Dubois entered so called "Bill on the right to disconnect" (Bill No.1097 : Right-to-Disconnect Act) in Assemble Nationale du Quebec. The purpose of the draft bill was to ensure compliance to rest periods of employees requiring from employers to accept the strategy of disconnection after business hours. According to this draft bill, employers in Quebec must develop "disconnection policy" after business hours to ensure compliance to rest periods of employees. For breaking the bill, it was proposed to introduce fines in the amount of $ 1,000 to $ 30,000. The bill was considered only in the first reading and was rejected. Government of Canada in the report "Disconnecting from work-related e-communications outside of work hours: Issue paper" indicates that there are currently no provinces or territories in the country that provide “the right to disconnect” [6]. Introduction of a “shutdown right” is considered redundant, as Canadian law enshrines the right to pay overtime.

In the Russian legislation, “the right to disconnect” has not yet been fixed, this problem is especially acute for remote workers. In accordance with Art. 312.4 of the Labor Code of the Russian Federation, regime of working hours and rest times of a remote employee is established by him at his discretion, unless otherwise provided by the contract on remote work. The following example may be indicative. The girl turned to the State Labor Inspectorate of the Rostov Region with the following question. In accordance with her official duties, she is entrusted with the duty of preparing reviews of online conferences within two days after their holding. One of these online conferences took place on Saturday morning, the review was done on weekends and presented on Monday. Does the employee have the right to payment in an increased amount? The response of the State Inspectorate states that “the employer no longer needs to keep records of working hours and filling out a time sheet for a remote employee. In relation to a remote worker who independently determines the mode of working time and rest time, "there is no need for increased wages for working at night and overtime, weekends and non-working holidays." It turns out that the Russian remote worker has no “the right to disconnect” yet. In addition, in the Russian Federation statistics are not being compiled either on the number of distance workers or on the duration of their working time [11].

IV. Discussion of Results

Performed study showed that in the digital economy, the boundaries between working time and rest time are blurring. In order to protect the employee's right to rest, it seems necessary to fix in the Labor Code of the Russian Federation norms:

- establishing a ban for the employer to require the employee to complete production tasks outside of working hours, including by sending electronic messages, using instant messengers;
- highlighting exceptional cases when the employer has the right to send messages to the employee after hours (for example, in the event of an industrial accident, fire);
- excluding the possibility of bringing the employee to disciplinary liability for non-performance of official duties when receiving such messages outside the working hours.

In addition to “the right to disconnect”, the employee must also have “the disconnection skill”. The use of digital technology leads to the formation of dependence on the Internet, phones and social networks. Modern people use the Internet on average more than 6 hours a day. Even if you give a person “the right to disconnect”, many modern users can voluntarily refuse it, preferring to always stay online. To formation of “the disconnect skill” can be facilitated by the dissemination of ideas about the need for “the digital detox”. Use of the Internet and mobile phones should be in a reasonable balance, and not displace walks, playing sports, talking with loved ones, and sleeping of the person. Securing “the right to disconnect” in the law may have a positive effect on the institution of parenthood, since women will be able to pay more attention to family and children without constantly looking at chats, messages and email.

V. Conclusions

Results of accomplished comparative legal study show that in a digital economy it is much more difficult to strike a balance between work and personal life. Achievements of international labor legislation to limit working hours are erased due to the fact that the employee constantly keeps in touch not only with the employer, but with whole outside world. In some European countries, legislative restrictions have already been introduced and “the right to disconnect” has been enshrined. For the Russian Federation, it seems necessary to amend both the labor legislation and the regulations that will determine the status of Internet platforms that provide work. It should be noted that "the right to disconnect" can be ensured not only through legislative procedures. The development of modern technology allows modern companies to realize "the right to disconnect" by technical means. For example, access to a production server may be limited to a certain number of working hours. After exceeding the norm of working time, access to the site is blocked, preventing the overtime by employees. It is this approach that aggregator sites can use. Summing up the

above, we can conclude that it is necessary to further study the issue of regulating working time and rest time in the digital economy.

Acknowledgment

The article is prepared with the financial support of the Russian Foundation for Fundamental Research within the scientific project No. 18-010-00774 “The research into the impact of the female telework on the institute of parenthood”.

References

[1] Chiuffo, F. (2019) The ‘Right to Disconnect’ or ‘How to Pull the Plug on Work’. SSRN Electronic Journal.

[2] Hesselberth, P. (2017) Discourses on disconnectivity and the right to disconnect. New Media & Society, vol. 20 (5), 1994–2010. doi:10.1177/1461444817711449

[3] Secunda, P. M. (2018) The employee right to disconnect. Notre Dame Journal of International and Comparative Law, vol, 8(1), pp. 1-34.

[4] Von Bergen, Clarence & Bressler, Martin & Proctor, Trevor. (2019) On the Grid 24/7/365 and the Right to Disconnect. Employee relations law journal. vol. 45. Pp, 3-20.

[5] R, Yu “996” Working Hour System: Why Does it Happen? https://en.pingwest.com/a/1392

[6] Disconnecting from work-related e-communications outside of work hours: Issue paper https://www.canada.ca/en/employment-social-development/services/labour-standards/reports/disconnecting-e-communications.html

[7] Kh. Song, Zh. (2018) Chernova Mobile devices as a way to establish a balance between work and personal life: the flip side, Monitoring of public opinion: economic and social changes, Vol 6 (148). pp. 201-215.

[8] Khusyainov, T. (2019) Risk of loss of the right to rest in the digital environment: the right to disconnect, Legal technique, vol. 13. pp. 787-788.

[9] Gremilova E. A. (2018) The right to disconnect: digital hyperexploitation on the example of education, Science and culture of Russia, Vol.1. pp. 258-261.

[10] Tymoshchuk, A. (2019) Media competence: freedom to connect and disconnect, Social competence. Vol. 4. No. 1 (11), pp. 50-58.

[11] N. Tonkikh, M.Chudinovskikh, T. Markova (2019) Assessment of female telework scope in the conditions of digital economy, Modern Management Trends and the Digital Economy: from Regional Development to Global Economic Growth" (MTDE 2019) DOI https://doi.org/mtde-19.2019.30